

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of an Investigation Regarding  
Qwest's Compliance with Section 271 of the  
Telecommunications Act of 1996 with  
Respect to the Provisions of InterLATA  
Services Originating in Minnesota

PUC Docket No. P-421/CI-96-1114  
OAH Docket No. 12-2500-14473-2

In the Matter of a Commission Investigation  
into Qwest's Compliance with Section  
271(c)(2)(B) of the Telecommunications Act  
of 1996; Checklist items 3, 7, 8, 9, 10, and  
12

PUC Docket No. P-421/CI-01-1370  
OAH Docket No. 12-2500-14485-2

In the Matter of a Commission Investigation  
into Qwest's Compliance with Section  
271(c)(2)(B) of the Telecommunications Act  
of 1996; Checklist items 1, 2, 4, 5, 6, 11, 13,  
and 14

PUC Docket No. P-421/CI-01-1371  
OAH Docket No. 7-2500-14486-2

In the Matter of a Commission Investigation  
into Qwest's Compliance with Section 272 of  
the Telecommunications Act of 1996's  
Separate Affiliate Requirement

PUC Docket No. P-421/CI-01-1372  
OAH Docket No. 7-2500-14487-2

In the Matter of a Commission Investigation  
into Qwest's Compliance with Section  
271(d)(3)(C) of the Telecommunications Act  
of 1996 That the Requested Authorization is  
Consistent with the Public Interest,  
Convenience and Necessity

PUC Docket No. P-421/CI-01-1373  
OAH Docket No. 6-2500-14488-2

In the Matter of the Commission's Review  
and Investigation of Qwest's Unbundled  
Network Element (UNE) Prices

PUC Docket No. P-421/CI-01-1375  
OAH Docket No. 12-2500-14490-2

In the Matter of the Request of Covad to  
Define and Price a Line Sharing over DLC  
UNE to be offered by Qwest

PUC Docket No. P-421/CI-02-293  
OAH Docket No. 12-2500-14765-2

## **TWELFTH PREHEARING ORDER**

These matters came on for prehearing conference before Administrative Law Judges Steve M. Mihalchick, Richard C. Luis, Allan W. Klein, and Kathleen A. Sheehy on March 1, 2002, by telephone. The record was held open until March 11, 2002 for submission of comments on a proposed schedule. The following persons noted their appearances at the prehearing conference:

John Devaney, Mary Rose Hughes, Kelly Cameron, Jeff Dillen, Jason Topp, and Robert E. Cattenach for Qwest.

Virginia Zeller, Priti Patel, and Steve Alpert, Assistant Attorneys General, for the Department of Commerce.

Jeanne Cochran and Thomas Bailey, Assistant Attorneys General, for the Office of the Attorney General, Residential Utility and Small Business Division.

Greg Merz and Lesley Lehr for WorldCom.

Steve Weigler and Rebecca DeCook for AT&T.

Cecilia Ray for the CLEC Coalition.

W. Patrick Judge for Covad .

Mark Ayotte, Briggs & Morgan, 332 Minnesota Street, Suite 2200, Saint Paul, Minnesota 55101, for AT&T Wireless Communications, Inc. (AT&T Wireless).

Diane Wells and Marc Fournier for the Public Utilities Commission staff.

## **SCHEDULE**

1. OAG-RUD moved for modification of the schedule in the Public Interest docket (1373) due to the anticipated date of the ROC OSS draft report becoming available. The existing schedule anticipated the draft report being available on February 27, 2002. The earliest estimate for when the ROC OSS draft report will be available is April 19, 2002.

2. The amendments to the schedule in all affected dockets are reflected in the attached Current Schedule.

3. Qwest commits to not file its formal 271 Application with the Federal Communications Commission before the earlier of the PUC giving a positive recommendation on Qwest's proposed application or August 15, 2002.

## CLARIFICATION OF PROTECTIVE ORDERS

4. AT&T Wireless filed an objection to disclosure of its sensitive and trade secret data in these proceedings. The protective orders issued in these matters govern information provided for any docket included in the Qwest 271 Application. The information subject to such orders includes "CLEC-specific" data. AT&T Wireless noted that it is not a CLEC and indicated that its objection would be addressed by including commercial mobile radio services providers within the protections of the two protective orders issued in this proceeding. There was no objection to the amendment to those orders proposed by AT&T Wireless.

5. For purposes of the Supplemental Protective Order dated November 27, 2001, and the Sixth Prehearing Order dated December 10, 2001, the provisions relating to the disclosure of CLEC-specific data shall be extended to include information relating to any commercial mobile radio services provider. This Order shall be attached to the Supplemental Protective Order and each party shall provide a copy of this provision to each person who executed Exhibit A to that Order on behalf of that party to ensure that the data are properly handled.

## DOC OBJECTION TO QWEST NOTICE OF INCORPORATION

6. Qwest filed a Notice of Incorporation on February 22, 2002, seeking to include a large number of documents in the Non-OSS Checklist Docket (1370). The Department objected to the incorporation as untimely, repetitive, unreliable, and violative of the rights of the parties to conduct discovery and cross-examine witnesses. Qwest responded that the Notice of Incorporation was filed to ensure that the documents could be used for purposes of cross-examination or redirect examination. Qwest pointed out that AT&T had moved to incorporate a large amount of data to which the Department had not objected.

7. The incorporation procedure in the Tenth Prehearing Order is intended to accomplish several goals. Parties must have the ability to conduct discovery prompted by the documents and engage in cross-examination of witnesses to meet their due process rights in this proceeding. The number of documents and size of the excerpts from those documents was intended to be limited.

8. The time allowed for parties to review Qwest's Notice of Incorporation was inadequate. Thus, the Department's motion objecting to the Notice was **GRANTED**. This Order does not preclude the limited use of these documents for cross-examination or redirect examination.

## QWEST'S SUPPLEMENTAL NOTICE OF INCORPORATION

9. Qwest filed a Supplemental Notice of Incorporation on February 28, 2002. The material sought to be included in the 1370 Docket record was a pleading filed in Arizona in response to an issue raised by AT&T in Arizona. This same issue is disputed by the parties in Minnesota. AT&T objected. At the hearing in the 1370 Docket last week, the Administrative Law Judge **RECEIVED** the Qwest pleading, while denying

AT&T's request that it then be allowed to file a copy of its reply to the Qwest pleading that it (AT&T) had just filed in Arizona. That was denied because AT&T had its witness on the issue available at the hearing here and he testified on the issue. Additional pleadings would not have been helpful.

### **QWEST'S MOTION TO STRIKE**

10. Qwest moved to strike any documents or testimony based on certain evidence not made available to Qwest as trade secret data. That evidence consisted of a White Pages verification listing from one CLEC and an E-911 directory assistance and info listing from another CLEC. The DOC agreed that the evidence would not be used. Qwest's motion to strike was **GRANTED**.

### **QWEST'S MOTION TO STRIKE SURREPLY OF EDWARD CAPUTO**

11. Worldcom filed surreply testimony by Edward Caputo related to checklist item 7 in the Non-OSS Checklist docket (1370). Worldcom argues that Qwest does not make custom routing available, so Qwest must offer directory assistance and operator services as a UNE. Caputo's testimony speaks to that issue. Qwest views customized routing as a switching issue more appropriate to checklist item 6 which is addressed in the OSS Checklist docket (1371). So, Qwest moved to strike that testimony as applicable to checklist item 6. These issues are intertwined, but since it is a threshold issue in Docket 1370, Qwest's motion was **DENIED**.

12. Qwest also raised an issue of timeliness of the surreply filing. Qwest stated that it received the surreply at 11:11 a.m. on February 27, 2002. The filing was received at OAH at 4:12 p.m. on February 26, 2002. Qwest's counsel was listed as a recipient. Worldcom's filing of the Caputo surreply was timely. Qwest was allowed to call an additional witness to respond to the Caputo testimony if necessary.

### **CLARIFICATION OF PARAGRAPH 8 OF THE ELEVENTH PREHEARING ORDER**

13. Paragraph 8 of the Eleventh Prehearing Order required the DOC to provide masked CLEC-specific information to Qwest, broken out by area-code. The Department indicated that the information available to it was not provided on that basis and that significant effort would be required to aggregate the data by area code. The Department and Qwest agreed that the data was unlikely to be useful when provided on that basis.

14. Qwest proposed providing an alternative means of protecting the confidentiality of the data described in paragraph 8. Qwest proposed that a single individual, with no role in marketing, be designated as the recipient of the information. That person would be bound by the protective orders in this matter and a further confidentiality agreement to not disclose any individual CLEC's data. Qwest has undertaken to notify the affected CLECs in the same manner as set out in the Sixth Prehearing Order paragraph 3. Since this data was originally provided by each CLEC, Qwest need only identify the generic classification of the CLEC data in the notice.

## **MERGER OF DOCKET 1916 INTO DOCKET 1375**

15. Docket 1916 (Repricing of UNE-P elements and DS1, HDSL, and ADSL) is merged into the UNE Pricing docket (1375), as directed by the Commission. The filing deadlines for particular issues are addressed in the amendments to the schedule governing all dockets.

## **PREFILED TESTIMONY PROCEDURE**

16. Real time court reporting will be used in the hearings for the OSS Checklist, Public Interest, UNE Pricing, and DLC Line Sharing dockets (1371, 1373, 1375, and 293). Parties shall serve paper copies of the prefiled testimony of each witness expected to appear on Shaddix and Associates by mail. Because of the unique terminology in these hearings, the testimony is needed by the court reporters to prepare their dictionaries to support real time displays the parties. Attachments need not be sent to the court reporter.

## **DLC LINE SHARING**

17. A new docket is established for DLC Line Sharing (OAH file number 12-2500-14765-2; PUC docket 293). This docket is assigned to Judge Mihalchick. The issues in the DLC Line Sharing docket are not required to be heard as part of the Qwest 271 application. But the PUC has directed OAH to provide the Recommendation in this docket before the 271 matters are concluded. Due to the commonality of interests between the parties, the similarity of the issues, and the PUC's deadline, the DLC Line Sharing docket will be administered in conjunction with the Qwest 271 Application dockets.

18. A telephone conference is hereby scheduled for 10:00 a.m. CST, March 14, 2002, to discuss issues and establish filing deadlines for this docket. The conference will be conducted on Mr. Topp's bridge line (877-582-8687 access code 8277949). Once a schedule for this docket is established, it will be included in the schedule governing the Section 271 dockets.

March 12, 2002

/s/ Richard C. Luis  
RICHARD C. LUIS  
STEVE M. MIHALCHICK  
ALLAN W. KLEIN  
KATHLEEN A. SHEEHY  
Administrative Law Judges